

**OA Item #1: IDS Paper #2 Missing:**

Applicants note that the Office Action Summary page included the handwritten note "Note: IDS Paper #2 Missing". Applicants aver that IDS #2 was mailed to the commissioner via first class mail on May 24, 2002. Applicants include herewith a photocopy of the one page IDS, a photocopy of the one page form PTO-1449, and a photocopy of the associated returned mailing card bearing a stamp by the USPTO.

**OA Item #2: Restriction under 35 USC § 121:**

In response to the restriction requirement under 35 USC § 121 imposed by the examiner, Applicants elect for prosecution and restricts their claims to the invention of Group I (product). Applicants make this election and withdraw claims directed to the non-elected group (group II) without prejudice to subsequent refiling in a divisional application at a later date.

**OA Item #3: Claim Rejections under 35 USC § 102(b):**

In response to the rejection under 35 USC § 102 (b), claims 1, 2, 4, 8, 9 and 11 have been amended so as to be drawn to edible substances. Therefore, Applicants believe claims 1, 2, 4, 8, 9 and 11, as well as claims 3 and 6 which depend from claim 1 and claims 10 and 13 which depend from claim 8 now satisfy the requirements of 35 USC § 102 (b).

**OA Item #4: Claim Rejections under 35 USC § 103(a):**

Applicants respectfully traverse the examiners rejection of claims 2, 4, 5, 7, 9, 11, 12 and 14 under 35 USC § 103(a). In the first instance, Applicants respectfully point out that claims 2, 4, 5 and 7 all depend from claim 1. Claim 1 has not been rejected under 35 USC § 103(a) and is therefore understood to be considered non-obvious. Inasmuch as claims 2, 4, 5 and 7 inherently include all of the limitations of claim 1 from which they depend, claims 2, 4, 5 and 7 are not seen as being rendered obvious merely by virtue of adding additional limitations to an otherwise non-obvious claim. Likewise, claim 8 has not been rejected under 35 USC § 103(a) and is therefore understood to be considered non-obvious. Inasmuch as claims 9, 11, 12 and 14 inherently include all of the limitations of claim 8 from

which they depend, claims 9, 11, 12 and 14 are not seen as being rendered obvious merely by virtue of adding additional limitations to an otherwise non-obvious claim.

In the second instance, Applicants readily acknowledge that they are not the inventors of mere containers with funnels or fluent candy products, and more especially that the Applicants are not the first to recognize the problem of spillage of fluent candy. Applicants heartily acknowledge that the problem of spillage of fluent candy has long been recognized but until Applicants' invention, a simple, practical solution that does not require excessive dexterity had not been invented. It is the very recognition of the problem of spillage of fluent candy, that has caused inventors such as Hoeting and manufactures such as Oddzon/Cap Toys, Inc. to invent and manufacture fluent candy/lollipop packaging concepts that attempt to address the problem of spillage. For instance, as noted in Applicants' application, in referring to the Coleman patent, Hoeting states, "To use the device of U.S. Pat. No. 5,370,884, the user must employ both hands to unscrew the cap and must dip the sucker into the powder reservoir. This device requires a level of dexterity and coordination often lacking in children, can result in spillage and is difficult to use in a manner which will provide uniform coating.". Hoeting continues, "It is therefore an object of the present invention to provide a device for both cleanly storing a confectionery product having a handle and for coating such a product with a granulated or particulate material in a generally uniform manner, all while minimizing spillage.". Also as noted in Applicants' application, while the Hoeting device may provide for some resistance to spillage while the container is closed, there is no access to the candy when the container is in the closed position. Worse yet, the Hoeting device also requires two-handed use or a level of dexterity and coordination often lacking in children in order to open and close the device. In opening the Hoeting device, which the user must do to access the candy of the Hoeting device, the user must unsnap the top container member from the bottom container member. This unsnapping action can cause the container to be jarred or shaken when the top is opened causing the particulate candy to readily spill out of the container. Furthermore, it is inherent in the process of coating the sucker of the Hoeting device to invert the container. If the user, typically a child, does not properly reorient the container in the upright position before opening the device, the container's contents are readily spilled. Also, if the container is not snapped tightly closed and then is bumped, dropped or tipped over, the container may again readily spill its contents. Thus it is

seen that although both Hoeting and Oddzon/Cap Toys, Inc. had available much of the “container with funnel” art, they still were unsuccessful in conceiving and developing the product disclosed in Applicants’ application. Applicants submit as exhibit 1, the product produced by Oddzon/Cap Toys, Inc. under the Oddzon/Cap Toys, Inc. assigned Hoeting patent. Had the benefits of Applicants’ invention been included in Hoeting or the Oddzon/Cap Toys product, such listed problems could have been overcome. Accordingly, the product produced by Oddzon/Cap Toys, Inc. under the Oddzon/Cap Toys, Inc. assigned Hoeting patent is considered a negative teaching as it fails to produce the intended spill resistant candy/lollipop container result.

Another example of such negative teaching can be found in the more recently discovered Fizzy Shaker product manufactured by Ausome Candies. Applicants submit as exhibit 2, the Fizzy Shaker product manufactured by Ausome Candies. This product also purports to be spill resistant. However, it is noted that in order to achieve spill resistance, the product must have a first portion rotated relative to a second portion. It is noted that when the product is in such a rotated state, the lollipop portion no longer has access to the candy powder portion. Furthermore, in practice, if the user forgets to rotate the product and the product is then tipped, the candy powder will spill. Just as in Hoeting, this product could overcome its problems related to spill resistance if the product incorporated the allegedly obvious container with a funnel. But as in the Hoeting product, in spite of the long felt need, the Fizzy Shaker product too is seen as a negative teaching.

In the case of the Lollipop Paint product for instance, the manufacturer was so unable to conceive of and produce a simply yet functional spill resistant candy/lollipop container (i.e. a container with a funnel), that the manufacturer added elaborate cautionary remedies, including professional dry cleaning, to the product’s label. This in spite of multiple instances of prior art containers with funnels.

Accordingly, Applicants respectfully suggest that Applicants’ invention is non-obvious. Applicants note that Applicants are unaware of the date of introduction into the market of either the products disclosed in Applicants’ original information disclosure statement or of the products included as exhibits in the office action response.

**Conclusion:**

Applicants note that any amendments made by this paper which are not specifically discussed herein are made solely for the purpose of more clearly and particularly pointing out and claiming Applicants' invention.

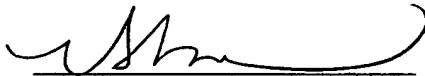
Applicants specifically reserve the right to prosecute claims of broader and differing scope than those presented herein in a continuation application.


Applicants submit that the amendments to the claims and the arguments presented herein have placed the claims in condition for allowance. Action in accordance therewith is earnestly solicited.

If the Examiner has any questions or comments which may be resolved over the telephone, he is requested to call Michael R. Schramm at 801-625-9268 (wk) or at 435-734-2599 (hm).

DATE: June 30, 2003

Respectfully submitted,

  
Vivian A. Schramm

  
Michael R. Schramm

## **VERSION WITH MARKINGS TO SHOW CHANGES MADE**

### **In the Claims:**

Claims 15-20 have been deleted and claims 1, 2, 4, 8, 9 and 11 have been amended as follows:

1. (amended) A container defining an inner cavity and a funnel extending into said inner cavity, wherein said container contains a substance of one of the following group of substances comprising a non-liquid edible substance, an edible particulate substance and a candy substance.
2. (amended) The container of claim 1 wherein said non-liquid edible substance further defines a substance of one of the following group of substances comprising a particulate substance, a candy powder substance, a candy bead substance, a substantially hard candy substance, a lollipop type candy substance, a particulate substance and a solid form substance, a candy powder substance and a substantially hard candy substance, a particulate substance and a lollipop type candy substance, and a candy powder substance and lollipop type candy substance and wherein said edible particulate substance further defines a substance of one of the following group of substances comprising an edible powder ~~particulate~~ substance, a candy powder substance, and a candy bead substance.
4. (amended) The container of claim 3 wherein said ~~substance defines an edible particulate substance and wherein~~ said container includes a lollipop type candy within said container and wherein said lollipop type candy is removable from said container by passing said lollipop type candy through said funnel.
8. (amended) A container defining an inner cavity and an open opening and wherein said container contains a substance and wherein said container inhibits the spillage of said substance when said container is oriented in any position and wherein said substance defines a substance of one of the following group of substances comprising a non-liquid edible substance, an edible particulate substance and a candy substance.
9. (amended) The container of claim 8 wherein said non-liquid edible substance further defines a substance of one of the following group of substances comprising a particulate

substance, a candy powder substance, a candy bead substance, a substantially hard candy substance, a lollipop type candy substance, a particulate substance and a solid form substance, a candy powder substance and a substantially hard candy substance, a particulate substance and a lollipop type candy substance, and a candy powder substance and lollipop type candy substance and wherein said edible particulate substance further defines a substance of one of the following group of substances comprising an edible powder particulate substance, a candy powder substance, and a candy bead substance.

11. (amended) The container of claim 10 wherein said ~~substance defines an edible particulate substance and wherein said~~ container includes a lollipop type candy within said container and wherein said lollipop type candy is removable from said container by passing said lollipop type candy through said funnel.
21. A container defining an inner cavity and a funnel extending into said inner cavity, wherein said container contains an edible fluent non-gaseous substance and wherein said container at least partially contains a removable unit of substantially solid confectionery material.
22. The container of claim 21 wherein said fluent non-gaseous substance further defines a substance of one of the following group of substances comprising a particulate substance, a granular substance, a powder substance, a candy powder substance, a candy bead substance.
23. The container of claim 21 wherein said container inhibits the spillage of said substance when said container is oriented in any position.
24. The container of claim 21 wherein said funnel includes an inner opening and wherein said inner opening is located near the center of said container.
25. The container of claim 21 wherein said unit of substantially solid confectionery material further defines a lollipop having a substantially solid edible candy portion and a handle portion.

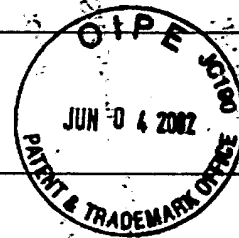


Serial # 09/707,156... mail # USPS 1<sup>st</sup> CLASS date: 5/24/02

Title: SPILL-PROOF CANOY CONTAINER

This Package contains:

- ☐ A ONE PAGE DISCLOSURE.
- ☐ A ONE PAGE FORM PTO-1449
- ☐ A COPY OF US 5,758,797
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**EXHIBIT 1: Sprinkle Pop – CAP Candy**





EXHIBIT 2: Fizzy Shaker – Ausome Candies

